

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0293
Withholding Tax
Responsible Officer
For the Tax Period 1989-1991

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ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995), Ball v. Indiana Department of Revenue, 563 N.E. 2nd 522 (Ind. 1990).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not properly remit withholding taxes to the state during the tax period 1989-1991. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to

remit sales and withholding taxes to the state. The taxpayer agreed at the hearing that he had the responsibility to oversee the corporation and see that the withholding taxes were remitted to the state. Therefore, the taxpayer had the statutory duty to remit the sales taxes and is personally liable for the payment of those taxes.

The taxpayer contends that he made a good faith effort to remit the taxes to the state twelve years ago when the business was closed. The department has no records, however, of any payments on the liabilities in question. The taxpayer was not able to present any documentation to prove that the taxes had been paid. The taxpayer did not meet his burden of proving that the withholding taxes had already been paid and are not owing at this time.

The taxpayer also argues that pursuant to the doctrine of laches, the department's delay in personally assessing the taxes against him bars the department from collecting the subject withholding taxes from him now. The Indiana Supreme Court held in Ball v. Indiana Department of Revenue, 563 N.E. 2nd 522 (Ind. 1990) at page 522 that laches would apply only if the department had acted "in an unusually dilatory manner." In this case, the transfer of the liability to the responsible officer was made in the normal course of the department's operations. The taxpayer presented no evidence that the department acted in an unusually dilatory manner in this case. Therefore laches does not bar this assessment against the taxpayer.

Finding

The taxpayer's protest is denied.